DOCUMENT RESUME

ED 417 549 EC 306 295

TITLE	State Education Department Staff Study: Oversight of the Performance of Special Education Programs. Report 96-J-5.
INSTITUTION	New York State Office of the Comptroller, Albany. Div. of Management Audit.
PUB DATE	1998-03-11
NOTE	42p.
AVAILABLE FROM	World Wide Web: http://www.osc.state.ny
PUB TYPE	Reports - Research (143)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Cost Effectiveness; *Disabilities; Disability Identification; Elementary Secondary Education; Expenditure per Student; *Program Costs; *Program Effectiveness; Program Evaluation; *Program Improvement; *Special Education; *Student Placement
IDENTIFIERS	*New York

ABSTRACT

This report discusses the findings of a study that investigated whether the New York State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has improved its oversight of special education by implementing a system for evaluating the performance of special education programs, and whether funding for special education should be reformed. The study reviewed the VESID's oversight of special education programs in New York schools for the period of April 1, 1994, through March 31, 1997. Relevant laws and regulations were reviewed, VESID data were analyzed, and VESID officials were interviewed. The study found that VESID has developed a comprehensive system for evaluating the performance of special education programs; however, if VESID made greater use of this performance information, it could improve its oversight of the programs. It also found that improvements are needed in the process used to fund special education programs, as school districts are given financial incentives to place students with disabilities in costly, more restrictive environments and to classify students without disabilities as having learning disabilities. Comments of VESID officials are at the end of the report and include proposed changes to the funding formula. (CR)

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State of New York
Office of the State Comptroller

Division of Management Audit
and State Financial Services
Division of Municipal Affairs

Report 96-J-5

Mr. Carl T. Hayden
Chancellor of the Board of Regents
The University of the State of New York
State Education Building
Albany, NY 12234

Dear Chancellor Hayden:

The following is our study of the State Education Department's oversight of the performance of special education programs.

We did this study according to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution; Section 8, Article 2 of the State Finance Law; and Article 3 of the General Municipal Law. We list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services
Division of Municipal Affairs

March 11, 1998

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Executive Summary

State Education Department Staff Study: Oversight Of The Performance Of Special Education Programs

Scope of Study

Elementary and secondary school students with disabilities may be provided with specially designed educational services in separate settings or in general classrooms with their nondisabled peers. According to Federal law and State policy, these services must be provided in the least restrictive environment that is suitable for the students. In New York State, more than 360,000 students are enrolled in special education programs at a cost exceeding $4 billion. Between the 1979-80 and 1995-96 school years, the number of students enrolled in New York's special education programs increased by 82 percent, while total public school enrollment decreased by 8 percent. New York's special education programs are provided by more than 700 local school districts, and are overseen by the State Education Department's (Department) Office of Vocational and Educational Services for Individuals with Disabilities (VESID).

Our study addressed the following questions about VESID's oversight of special education programs for the period April 1, 1994 through March 31, 1997:

- Has VESID improved its oversight of special education by implementing a system for evaluating the performance of special education programs?

- Should funding for special education be reformed?

Observations and Conclusions

We found that VESID has developed a comprehensive system for evaluating the performance of special education programs. If VESID made greater use of this performance information, it could improve its oversight of the programs. We also found that improvements are needed in the process used to fund special education programs, as school districts are given financial incentives to place disabled students in costly, more restrictive environments and to classify nondisabled students as learning disabled.

We found that VESID has established a system for measuring the outcomes of each school district's special education programs. We commend VESID officials for their efforts in this area. VESID also conducts periodic reviews of special education activities in each school

district. These reviews are scheduled for a seven-year cycle, but we believe districts should be scheduled for review on the basis of the outcome measurements maintained by VESID. In this way, the districts with the better outcomes would be reviewed less frequently, and VESID could concentrate on improving the performance of the special education programs most in need of improvement. VESID could also use the outcome measurements to identify statewide issues that need attention and to make informed decisions about special education policies. (See pp. 5-10)

We visited seven school districts and found that some of the districts are much less effective than others at placing disabled students in general classrooms. We question whether VESID needs to take a more active role in helping such districts improve their special education programs. We also found that some of the districts did not accurately report their special education outcomes to VESID. We question whether improvements are needed in VESID's procedures for ensuring the accuracy of this information. (See pp. 10-12)

New York's special education programs are funded by local property taxes, Federal aid and State aid. The amount of State aid provided to each school district is determined by a complex formula. We found that, because of the nature of the formula, additional State aid is granted when special education programs are provided in separate settings rather than in general classrooms. As a result, school districts have an incentive to place disabled students in separate settings, even though these settings are costlier and constitute a more restrictive environment than general classrooms. In addition, because State aid is more readily available for special education programs than for general instructional support, school districts may classify nondisabled students who need additional instructional support as learning disabled in order to provide the students with the support they need. (See pp. 13-14)

Both the Board of Regents and the Governor have proposed legislation to change the way State aid is distributed to school districts. Under their proposals, school districts would no longer have incentives to place disabled students in more restrictive environments or to inappropriately classify students as learning disabled. We note that similar improvements have been implemented in other states. Unfortunately, these proposals were not enacted in the 1997 legislative session. We encourage New York State policymakers to make these kinds of improvements in the system for funding special education programs in New York. (See pp. 15-17)

Comments of Department and District Officials

Department officials generally agreed with our observations and conclusions and provided information on actions they have taken or plan to take to refine its system of oversight for districts.

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Introduction

Background

The State Education Department (Department) is the administrative agency of the State Board of Regents. The Department is responsible for overseeing elementary and secondary education programs throughout New York and promoting the attainment of State policy goals for educational excellence, equity and cost-effectiveness. New York's elementary and secondary public schools are operated by more than 700 local school districts.

Prior to the 1960s, children and youths with disabilities were often denied access to the same educational services as their nondisabled peers. However, during the 1960s, parents of students with disabilities began to organize and demand educational services as a civil right. Court rulings in a majority of states held that all children and youths with disabilities had the right to a free and appropriate education that could not be diluted or excused because of fiscal constraints, and should be provided first to the unserviced and most severely disabled. The Federal Elementary and Secondary Education Act, which was passed in 1965, supported the belief that children with disabilities have a right to receive educational services.

In 1975, the Federal Education for All Handicapped Children Act (later amended as the Individuals With Disabilities Education Act) was signed into law. With the passage of this act, what was previously a patchwork of programs for students with disabilities began transformation into a truly national system of services. This act established in statute the right to a free and appropriate education for all children with disabilities and provided safeguards and procedural specifications to ensure that right. In addition, the act provides incentives for states and localities to comply with its provisions by granting Federal aid for 40 percent of the additional costs of providing a free and appropriate education for all children and youths with disabilities.

In New York State, local school districts are responsible for providing specially designed services in the least restrictive environment to students who have been determined to have disabilities (e.g., learning disabled, blind, or emotionally disturbed). Students are to be referred for special education services by their parents, guardians, teachers or other school personnel, and are to be evaluated by committees on special education. Once classified, students with disabilities may receive special education services in separate settings or in general education classrooms with their nondisabled peers, or a combination of the two. A range or continuum

of services is available to students whereby they may receive special education services for as little as one period a week all the way up to the entire school week.

In the 1995-96 school year, 362,202 students were enrolled in special education programs in New York State. In the 1994-95 fiscal year (the most recent year for which data was available at the time of our study), these programs cost $4.1 billion. The performance and funding of these programs is overseen by the Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID). New York's special education programs are funded by local property taxes, Federal aid and State aid. Federal aid reimburses certain expenses, while the amount of State aid provided to each school district is determined by a complex formula.

Scope, Objectives and Methodology of Study

We reviewed the Department's oversight of special education programs in New York schools for the period April 1, 1994 through March 31, 1997. The objectives of our study were to evaluate the Department's practices for measuring the performance of special education programs and funding special education services.

We did this study through the joint efforts of the Office of the State Comptroller's Division of Management Audit and State Financial Services, and the Division of Municipal Affairs.

To accomplish our objectives, we reviewed relevant laws and regulations, compiled and analyzed relevant Department data, and interviewed Department officials. We also reviewed publications in the field of special education, as well as proposed legislation submitted by the Board of Regents and by the Governor relating to education financing in New York State. We also visited seven school districts (Central Islip, New York City, Ravena, Rush-Henrietta, Syracuse, Williamsville and Wyandanch) to interview school district officials, review student records, and review performance data. In addition, we contacted education officials from nine other states (California, Florida, Illinois, New Jersey, Ohio, Oregon, Pennsylvania, Texas and Vermont) to gather information concerning their special education programs. We did not audit the data provided by these states, which varied in completeness and quality, nor did we review the quality of the special education services provided by these states. However, we do not believe that this had a significant effect on our overall conclusions.

Although this report is directed to the Department, many of the problems described in the report cannot be effectively addressed by Department officials acting on their own. Rather, the questions we raise are best addressed by the joint efforts of Department officials, local officials, and New York State policymakers.

Comments of Department Officials

Draft copies of the matters included in this study were provided to Department officials and officials of the school districts we visited. Department officials generally agree with our observations and conclusions and advised us of the actions they have taken or plan to take to refine the system of oversight for districts. We considered their comments in preparing this report. The Department's response is included as Appendix B.

Within 90 days after final release of this report, the Commissioner of the State Education Department should report to the Governor, the State Comptroller, and leaders of the Legislature and fiscal committees, advising what actions were taken to respond to the observations and conclusions contained in this report.

Measuring Special Education Outcomes

We found that the Department has made considerable progress in establishing a system for measuring the outcomes of special education programs. We believe that, if the Department made greater use of this outcome information, it could improve its oversight of these programs. We also found that improvements are needed in Department procedures for ensuring the accuracy of the outcome information provided by the districts.

Department Efforts

In January 1995, the administration of the Department's Office for Special Education Services was moved from the Office of Elementary, Middle and Secondary and Continuing Education to VESID. The mission of VESID includes developing and coordinating appropriate services so that people with disabilities can lead self-sufficient, self-directed lives to the maximum extent possible.

Federal and State laws and regulations concerning special education concentrate on the process for student screening, student evaluation, program selection, and service delivery. Over the years, much data has been collected on who is in the program, but very little is known about student accomplishments in special education programs. To its credit, VESID management is attempting to move away from a system that has traditionally been preoccupied with inputs and processes to a system that places greater emphasis on the outcomes that are being achieved by students in special education programs. In 1996, VESID published a strategic plan for special education. This plan includes standards and expected outcomes for students receiving special education services. VESID communicated these new standards to the districts and established performance indicators to monitor and track the districts' success in meeting these standards. The performance indicators include the percentage of students with disabilities earning a regents, local or high school equivalency diploma; the percentage of students with disabilities who drop out before receiving a diploma; the participation and performance of students receiving special education in the State standardized testing program; and the percentage of school-age students with disabilities who receive services in general education classroom settings.

VESID management has taken steps to compile this performance data in its Performance Report of Educational and Vocational Services and Results for Individuals with Disabilities (Performance Report). The

collection of information of this nature from over 700 school districts is a monumental task and VESID did a commendable job of designing a system for collecting and summarizing this data. Information of this nature can be used to measure and compare the performances of school districts to one another and also can be used to make informed decisions regarding the deployment of VESID's limited oversight resources.

As shown by the following examples, the information contained in the Performance Report indicates that New York school districts have a way to go to achieve special education goals:

- The percentage of students with disabilities receiving a regents, local or high school equivalency diploma increased slightly from 60 percent in 1993-94 to 61 percent in 1995-96. Although schools are making some progress in this area, they have not yet achieved the VESID goal of 80 percent.

- The percentage of students in special education who drop out before receiving a diploma increased slightly from 5.3 percent in 1993-94 to 5.9 percent in 1995-96.

- New York established the goal of reaching or exceeding the national average in teaching students with disabilities in a general education classroom. In 1995-96, 41.6 percent of New York's special education students received services in a general education classroom, 13.2 percent of the students received services in a resource room (a separate classroom for part of the school day), 34.4 percent of the students received services in a separate classroom, and 10.8 percent of the students received services in a separate facility. In contrast, the national average was 43.4 percent for regular (general education) class integration, 29.5 percent for a resource room, 22.7 percent for separate classrooms, and 4.4 percent for separate facilities. As a result, New York has not achieved its goal, as a much greater percentage of its students (about 45 percent compared to the national average of about 27 percent) received services in separate classrooms or separate facilities.

- New York established a goal of decreasing the percentage of students who are classified as disabled. However, the percentage of students who are classified as disabled has increased from 9.9 percent in 1992-93 to 11.1 percent in 1995-96.

VESID's Quality Assurance Unit (Unit) is responsible for reviewing special education activities at the districts. In these reviews, the Unit evaluates compliance with special education requirements, and develops a plan for improving the outcomes of students with disabilities and better integrating these students with their nondisabled peers. Each year the Unit reviews approximately 100 school districts and 150 other entities, such as the Board of Cooperative Educational Services (BOCES), private schools, preschool handicapped program providers, and other types of schools. The reviews are to be done on a seven-year cycle, but VESID officials told us they are finding it difficult to maintain this schedule because of staffing cuts during the past few years.

We examined Unit reports describing the results of their reviews. We found that, although the plans developed by the Unit do provide districts with an opportunity to identify areas of improvement, most of the report is devoted to a district's compliance with special education laws. We realize that VESID cannot ignore compliance when reviewing district operations, but compliance alone does not ensure that special education programs will accomplish Department goals and objectives. We commend the Department's efforts in establishing performance measures and collecting information about program outcomes, but believe the Department should devote more of its resources to those districts that have demonstrated poor performance. VESID officials have compiled a list of the top and bottom districts based on their analysis of performance data and classification rates. The use of a risk-based approach in selecting districts for review would focus Unit efforts on those districts that have been identified as having the greatest probability for needing improvement. Under a risk-based approach, little effort would be devoted to reviewing those districts that may be relatively efficient or effective.

For example, the percentage of time spent outside of the regular classroom by disabled students is tracked by VESID because a VESID goal is to have students with disabilities integrated with their nondisabled peers throughout their educational experience. In its 1995-96 Performance Report, VESID reported these statistics for the Big-5 districts (Buffalo, Rochester, Syracuse, Yonkers and New York City):

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District	Percentage of Students Outside Regular Classroom				Per Student Cost of Special Education
	0-20% of the time	21-60% of the time	61-99% of the time	100% (separate settings)	
Syracuse	44.1%	24.7%	27.4%	3.8%	$7,890
Buffalo	43.9%	1.8%	48.8%	5.5%	$8,855
Yonkers	17.1%	7.7%	65.3%	9.9%	$10,635
Rochester	46.2%	1.9%	45.5%	6.4%	$11,321
New York City	39.9%	0.2%	44.8%	15.1%	$13,497

This information is already collected by VESID, but is not used by VESID officials to target their resources. Analyzing information of this nature would enable VESID officials to identify districts that may not be meeting Department goals and objectives established for students with disabilities. For example, 75.2 percent of the Yonkers students with disabilities spend more than 60 percent of their day outside of the regular classroom. In contrast, only 31.2 percent of the Syracuse students with disabilities spend more than 60 percent of their day outside of the regular classroom. This suggests that Yonkers is having a difficult time meeting VESID's goal of integration, and requires additional attention from VESID.

VESID officials could also use the performance information to identify statewide issues that require attention, and could conduct reviews of these issues at more than one district at a time. For example, if VESID found that drop-out rates were increasing at many districts, it could review the special education programs at selected districts to determine why the drop-out rates were increasing and what could be done to prevent the increase. VESID officials could also use the performance information to make informed decisions about special education policies.

In addition, once VESID has used its performance information to identify successful districts, it could determine why these districts are successful and use this knowledge to help other districts improve their special education programs. VESID has done this to some extent, as in 1995, it identified 14 districts with effective special education practices in one or more areas, gave these districts additional funding so that they could

provide technical assistance to other districts to encourage replication of the effective practices, and gave additional funding to other districts that wanted to improve their special education practices. We commend VESID officials for these actions, but believe improvements in special education programs would be more likely if VESID took a more active role in the process by determining why some districts are more successful than others and by participating directly in the efforts to help the districts improve their programs.

The Department believes that all schools must be accountable to the public and that, if information about school performance is shared with the public, schools are more likely to focus on the importance of results. Accordingly, in 1996 the Department began a school district report card initiative, in which certain aspects of each school's performance are reported publicly. In December 1996, the Department issued its first school report card; however, it did not separately identify the performance of students in special education programs. We believe such reporting could help schools give more emphasis to improving their special education programs. The Department has drafted regulations for disclosing special education performance in the school report card, but these regulations have not yet been approved by the Board of Regents. In addition, the Department is surveying school district officials to obtain their input on the nature and extent of the information that should be included in the school report card about special education programs. Department officials told us they hope to disclose information about special education programs in the 1997 school report card.

Issues To Be Considered

1. Should VESID target its resources to those districts whose procedures and outcomes warrant additional attention?

2. Should VESID use the outcome information from the districts to identify statewide issues for review and to make informed policy decisions?

3. Should VESID take a more active role in helping districts improve their special education programs?

(Department officials replied that since the time our study was completed, VESID has developed a three-level system of special education quality assurance reviews. They are Verification Districts, Quality Assurance Districts and Extended Review Districts. This system is designed to allow the Department to fulfill its Federal obligation to ensure oversight of all districts in the State while permitting VESID to concentrate its resources on those districts that are exhibiting the greatest difficulties in meeting the objectives for students with disabilities in the areas of achievement and integration. In addition, VESID is carefully reviewing patterns in district performance on the outcome measures to identify Statewide issues. Department officials described other actions that they have taken, however, they stated that staffing levels preclude a more intensive level of direct involvement with districts especially given the increased staff responsibilities associated with oversight of preschool programs and the difficulties in filling professional vacancies.)

District Efforts

The districts are responsible for identifying all students with disabilities who reside in the district. Once such students are identified, the districts are responsible for providing the students with appropriate special education services in the least restrictive environment. The districts are responsible for developing the students' annual goals, short-term instructional objectives, and the criteria and procedures used to evaluate the students' performance. The districts develop an individual education program (IEP) for each student with disabilities. An IEP is a written plan which specifies the special education programs and services to be

provided to meet the unique educational needs of a student with a disability. Districts are required to review IEPs on an annual basis and make any changes deemed necessary.

When we visited the seven districts included in our study, we reviewed their practices to determine whether the districts were developing and reviewing IEPs as required. We found that they were developing IEPs as required, but student files at five of the seven districts did not contain documentation demonstrating that IEP goals were reviewed annually. As a result, the IEPs in these districts may not meet the students' needs as well as they could. In addition, Department regulations allow a district to award a high school IEP diploma if a student has achieved the educational goals specified in the IEP. However, we found that six of the seven districts did not have procedures for documenting the completion of IEP goals and objectives. Consequently, we could not conclusively determine whether the students who received an IEP diploma had fulfilled the requirements for the diploma.

We also found that the methods used to provide special education services vary significantly among the districts. For example, the Syracuse district provides over 95 percent of its special education programming within the district. In contrast, at the Central Islip district, nearly 22 percent of the students with disabilities receive services from a BOCES provider, which is a more costly way of servicing disabled students and appears to conflict with the district's and the Department's least restrictive environment policy. We note that Central Islip's special education cost per student is nearly twice the cost incurred by Syracuse ($14,197 compared to $7,890), and Central Islip is facing a class action lawsuit by parents of students with disabilities for not providing services in the least restrictive environment.

Every year the districts are required to report certain information about their special education programs to VESID, which includes this information in its Performance Report. VESID has procedures for verifying the accuracy of this information. To determine the effectiveness of these procedures, we compared information in the 1995-96 Performance Report to the source documentation for this information in six of the seven districts we visited (all but New York City). We found that VESID's procedures are not sufficient to ensure that the reported information is accurate, as at four of the six districts we were unable to reconcile information published in the Performance Report to the source documentation maintained at the district. For example, one of the districts reported that 18 students had earned a local or IEP diploma.

However, district records supported only nine diplomas. Consequently, the information used by VESID to summarize the results of special education outcomes may not be reliable. Since this outcome information is becoming more important, it is crucial that the information be reliable.

Issues To Be Considered

4. What additional actions should be taken by VESID officials to ensure that IEP goals are reviewed annually and IEP diplomas are awarded only when all educational requirements are met?

5. Why are there such disparities in the methods used by the districts to provide special education programs?

6. What steps need to be taken by VESID officials to ensure that the statistical information collected from the districts is accurate?

(Department officials replied that the 1997 amendments of the Individuals With Disabilities Education Act (IDEA) require VESID to work with stakeholders across the State to develop an accountability system for those students with such severe disabilities that they are unable to participate in the general education curriculum. They added that the development of this system should greatly increase the district's accountability when awarding IEP diplomas. IDEA also requires that IEPs include measurable annual goals, including benchmarks or short-term instructional objectives to meet the child's needs to progress in the general education curriculum. Regarding the accuracy of the statistical information provided by the districts, Department officials replied that VESID's new multi-tiered Quality Assurance system should help them to determine whether the reported information is accurate.)

Funding Special Education Services

The number of children classified as disabled continues to escalate. According to Department records, the number of students aged 5 to 21 enrolled in kindergarten through twelfth grade special education programs has increased by 82 percent from 198,884 students in the 1979-80 school year to 362,202 students in the 1995-96 school year. However, during this timeframe total public school enrollment decreased by 8 percent. Overall, the share of total enrollment represented by students with disabilities increased from 6.7 percent in 1979-80 to 11.1 percent in 1995-96. During the 1994-95 school year, special education costs represented 16 percent, 22 percent and 13 percent of the total education costs of New York State, New York City, and districts outside New York City, respectively.

Public schools are financed by a combination of local property taxes, State aid and Federal aid. Federal aid generally reimburses certain expenses, while State aid is generally paid in inverse proportion to a district's wealth (as measured by its property valuation and income wealth): low-wealth school districts get more aid than do wealthier districts. However, since local property taxes account for the majority of public school financing, the State aid payments to low-wealth school districts are not high enough to allow them to approach the amounts spent by the wealthier districts, and there are great disparities in spending, and thus educational programs, between high-wealth and low-wealth districts. As a result, the quality of special education programs may vary significantly from district to district.

The amount of State aid provided to each school district is determined by a complex formula. This formula can discourage districts from placing disabled students in the least restrictive environment. Under the current funding mechanism, school districts receive aid based on the level of the services provided. Services that are provided in the general education classroom are considered less intense than services provided outside of the classroom, and therefore, generate less aid. Consequently, school districts are given a financial incentive to place students with disabilities in more restrictive environments outside the general education classroom, even though Federal law and State policy require that these students be placed in the least restrictive environment. The Deputy Commissioner of VESID recently reported to the Board of Regents that

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many students with disabilities are not placed in general education classrooms, because school districts often have their State aid reduced when they attempt to build a more supportive general education environment.

In 1996, the Department's Office of Audit Services (Office) reviewed special education costs in three selected school districts. The Office found that the total cost for special education in these three districts is twice the cost of general education. Among students with disabilities, the average annual cost ranged from $10,547 for a student served in a district school, to $20,645 for a student served in a BOCES program, to $38,906 for a student served in an approved private school. In contrast, the Office found that the total average cost for a general education student in these three districts was $6,465. The Office also found that districts did not always maintain adequate documentation to support the weightings reported for their special education students (to some extent, State aid is calculated on a per student basis, and special education students are weighted more heavily in these calculations than nondisabled students) and did not always report weightings based on the time students spent receiving special education, as required. Because of these errors, the Office estimated that the three districts received a total of $219,000 more in State aid than they were entitled to receive during school year 1994-95. Given the similar incentives facing all districts, we have no reason to believe that such overpayments are limited to these three districts.

The State Comptroller has also looked at the school financing issue. In a 1996 report entitled "An Agenda for Equitable and Cost-Effective School Finance Reform," the Comptroller indicated that State aid should be provided through a formula mechanism that does not reward higher spending or penalize efficiency. The Comptroller indicated that expense-based categories of aid (in which expenditures above a certain level are reimbursed at a greater rate) have traditionally grown at a much faster pace than operating aids (in which higher spending does not result in higher reimbursement rates). For example, over the four-year period 1993-94 through 1996-97, general education operating aid increased 9.4 percent. Over this same timeframe, the two expense-based categories of special education aid increased 15.1 percent and 21.7 percent. The Comptroller further indicated that too much emphasis is placed on reimbursing expenses in the current system, resulting in cost escalation at both the State and local levels, and that formulas that reimburse expenses provide the wrong incentives. They reward higher spending

and provide a disincentive to efficiencies, because if you spend more you get more aid and if you spend less, you get less aid.

The escalation of special education services is not limited to New York. A May 1996 report issued by the Center for Special Education Finance, which is funded by the U.S. Department of Education, indicated that national special education enrollments in the 1993-94 school year totaled 5.37 million students with an estimated cost in excess of $32 billion. The report goes on to indicate that the development and full implementation of special education programs and related services for students with disabilities represents the largest undertaking by primary and secondary schools in over 20 years. In a national sample of school districts, it was reported that over 38 percent of all new education dollars between 1967 and 1991 went to special education.

Change in the way special education programs are financed is being considered at the Federal and State levels, as more than two-thirds of the states are engaged in activities to change the way in which they fund special education. New York is among the states considering such reform, as the Board of Regents and the Governor have proposed legislation which seeks the establishment of a new finance system for 1997-98 State aid distributions. Under the Regents' proposal, the new finance system would be phased in over a four-year period beginning with the 1998-99 school year. At the end of the phase-in period, each district would receive the same base amount of special education aid, and this amount would be adjusted upward or downward depending on the percentage of district students living in poverty. This proposal sought to provide funding for special education programs in a way that does not encourage unnecessary referrals to special education or more restrictive placements for students in special education programs. The Regents' proposal also sought to increase State aid for general education support services so that school districts can provide prevention and support services to students experiencing learning disabilities rather than referring such students to special education programs.

The Governor's proposal was similar to the Regent's proposal, except that the Governor proposed implementing these changes in the 1997-98 school year without any phase-in period. The Regents contend that a phase-in period is needed to give school districts enough time to transition to the new funding formula and develop prevention programs, support services and more cost-effective special education programs. Unfortunately, these proposals were not enacted in the 1997 legislative session.

Pennsylvania and Vermont have taken actions similar to the initiatives proposed in New York. Pennsylvania has implemented a prevention component utilizing Instructional Support Teams (IST), which are groups of professionals that function as gatekeepers to special education. The use of an IST is required prior to referring a student to special education. ISTs strive to provide students with the assistance they need to remain in the general education classroom. Pennsylvania reported that approximately 85 percent of the students supported by ISTs meet their academic or behavioral goals and are not referred for further evaluation. In addition, schools that have implemented ISTs have 34 percent fewer total placements in special education than schools that have not implemented ISTs. Pennsylvania administrators believe that they will achieve substantial savings using this approach.

Vermont's Act 230 is aimed at reducing the dependence on programs such as special education by increasing the capacity of the whole education system to better meet the needs of all students. Similar to Pennsylvania's initiative, schools in Vermont now have Instructional Support Teams. Vermont administrators sought to provide remedial services to those students who did not truly qualify for special education services with the hope of preventing placement in a special education program at a later date. Vermont has seen a significant reduction in the number of students placed in special education programs. Students who were in need of some form of service were declassified and served by these newly formed support services. Funding was restructured so that special education savings could be spent on these new support services.

Based on the continued escalation in special education enrollment and cost, it is evident that the reforms proposed by the Regents and the Governor warrant close attention. Despite recent program reforms, New York's special education financing system continues to encourage unnecessary referrals of children into restrictive special education programs. School districts may have many students who could benefit from added instruction, but in the current system of State aid, the only way to provide these students with this instruction is to classify them as learning disabled.

Issues To Be Considered

7. What actions should be taken to reform the State's mechanism for funding special education programs?

8. What steps need to be taken to ensure that school districts' claims for special education funding are accurate?

9. To what extent are students placed in special education programs because other options have not been developed to meet their needs?

(Department officials replied that the reform of special education finance continues to be a priority of the Board of Regents and the Education Department, and as such, they have a 1998-99 Regents State Aid proposal for the special education reform program. One highlight of this proposal is the strengthening of school districts' ability to educate children in general education by providing significant increases in aid over a four-year period for prevention and support services. They indicated that the current funding of the special education program may have resulted in a special education system serving children that it was not originally designed to serve. However, they believe that the funding formula proposed by the Board of Regents will enhance local flexibility in making resources available to serve children, using a variety of delivery models, based on their educational needs.)

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November 28, 1997

Mr. William Challice
Audit Director
Office of the State Comptroller
Division of Management Audit & State Financial Services
270 Broadway, 19th Floor
New York, NY 10007

Dear Mr. Challice:

This is in response to your letter of October 21, 1997 relating to the State Comptroller's Draft Audit Report (96-J-5) - State Education Department's Oversight of the Performance of Special Education Programs.

Overall, we support the findings of this audit because they identify issues that are currently being addressed through the Department's efforts to reform special education in New York State. The Comptroller's report raises a series of questions addressing two central themes of the audit: VESID's oversight responsibility of special education in terms of implementing a system for evaluating the performance of special education programs; and the Department's role in regard to the reform of special education funding.

Our responses to the questions raised by the audit are provided below. But first, I would like to offer a few comments on the section of the draft audit report entitled "Funding Special Education Services:

page 11, paragraph 2	A district's wealth is measured by its property and income wealth, not just its property taxes.
page 11, paragraph 3	Line 5 should read "level of services provided" rather than "intensity."
	A statement should be added after sentence four: "Furthermore, economies of scale that result from grouping students with disabilities provide a financial incentive to segregate these students."

page 13, paragraph 2

The last sentence in this paragraph should be amended to read: "The Regents proposal also sought significant increases in State Aid for general education support services so that school districts can provide prevention and support services to students experiencing learning difficulties rather than referring such students to special education programs.

Measuring Special Education Outcomes

1. **Should VESID target its resources to those districts whose procedures and outcomes warrant additional attention?**

2. **Should VESID use the outcome information from the districts to identify statewide issues for review and to make informed policy decisions?**

3. **Should VESID take a more active role in helping districts improve their special education programs?**

The Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has continued to refine its system of oversight for districts since the time this audit was completed. We now have a three-level system of special education quality assurance reviews. The enclosed chart summarizes the three different levels: Verification Districts, Quality Assurance Districts, and Extended Review Districts. The extent of VESID involvement is dependent upon the performance outcomes exhibited by the district. This system is designed to allow the Department to fulfill its federal obligation to ensure oversight of all districts in the State while permitting VESID to concentrate its human and fiscal resources on those districts that are exhibiting the greatest difficulties in meeting our objectives for students with disabilities in the areas of achievement and integration. The special education Quality Assurance review procedures are described on the attached flow chart.

VESID is also carefully reviewing patterns in district performance on the outcome measures to identify statewide issues and develop interventions to address those issues. For example, we are continuing to disaggregate placement data across BOCES regions in order to determine those areas of the State where we need to focus additional attention in order to improve levels of student integration.

VESID is making every attempt to maximize its impact in helping districts improve their special education programs through both the revised quality assurance process and the focusing of the federal Individuals with Disabilities Education Act (IDEA) – Part B discretionary funds on initiatives to improve achievement and integration. However, staffing levels preclude a more intensive level of direct involvement with districts especially given the increased staff responsibilities associated with oversight of preschool programs and the continuing difficulties in receiving permission to fill professional vacancies. Consistent with the 1997-98 State budget requirements, the Education

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Department will send letters to districts having rates of referral to special education that are significantly higher than the statewide average, overreliance on restrictive placements or other significant problems. School districts are required to submit to the Department a response which offers an explanation for each identified problem.

4. **What additional actions should be taken by VESID officials to ensure that IEP goals are reviewed annually and IEP diplomas are awarded only when all educational requirements are met?**

The 1997 amendments of the IDEA require VESID to work with stakeholders across the State to develop an accountability system for those students with such severe disabilities that they are unable to participate in the general education curriculum. The completion of the development of modified alternate performance indicators associated with the standards established for all students and an alternative assessment system to track the progress of these students should greatly increase the district's accountability when awarding IEP diplomas. IDEA also requires that IEPs include measurable annual goals, including benchmarks or short-term instructional objectives to meet the child's needs to progress in the general education curriculum.

5. **Why are there such disparities in the methods used by the districts to provide special education programs?**

There are many historical reasons why districts have developed different patterns of delivery of special education services. One of our goals in analyzing disaggregated data is to determine where these differences may be resulting in inappropriate outcomes and placements for students with disabilities. In addition, information on districts that exhibit appropriate practices will be used to promote the replication of these practices in those districts where problems have been identified.

6. **What steps need to be taken by VESID officials to ensure that the statistical information collected from the districts is accurate?**

Although resources are insufficient to conduct on-site data verification procedures in all school districts on an annual basis, VESID has begun to phase in such procedures on a limited basis as it implements its new multi-tiered Quality Assurance system. The type of program review in which a school district participates is determined by its most current key performance statistics; the intensity of the data review is generally determined by the category of program review to which the district is assigned. VESID staff review source documentation each year for all key performance indicators in those districts designated as verification districts. Although data are reviewed in all other districts scheduled for reviews each year, source documentation is typically resorted to only if the district challenges a particular data element. The Department's new emphasis on the need for accurate data, the school report card process and the use of data to drive many critical decisions at both the State and local levels are all making districts much more aware of their responsibility to ensure the accuracy of all data they generate.

Current procedures far exceed verification procedures established by the United States Department of Education, and include the following:

- Forms are reviewed to ensure that they are correctly completed, programmatically appropriate and internally consistent.
- Current-previous year data comparisons are conducted for each school district. School districts are contacted to verify data when significant year-to-year discrepancies are identified.
- Data are downloaded, summarized and sent to each school district for review/verification prior to publication.
- Performance data are published, school district by school district, in the Performance Report.
- A survey was conducted during 1996-97 to identify the need to clarify directions and definitions. 1997-98 data collection instruments were revised based on survey results.
- VESID conducts regional training programs regarding Special Education Data Collection and Analysis. During 1996-97, 14 presentations were conducted for approximately 630 local level data managers.

Funding Special Education Services

7. **What actions should be taken to reform the State's mechanism for funding special education programs?**

A priority of the Board of Regents and the Education Department continues to be the reform of special education finance as a critical strategy to meet the Board of Regents goals to improve results for students with disabilities. As noted in the audit, the Department advanced a legislative proposal to reform the State's special education finance system for the 1997-98 school year and components of this proposal were supported by the Governor's Office. Although the Legislature did not act on this proposal, the Regents 1998-99 State Aid proposal continues to advocate for special education finance reform. Enclosed is an excerpt of the 1998-99 Regents State Aid proposal describing the special education reform program, which was discussed by the Board of Regents at its November 1997 meeting.

The highlights of this year's proposal include:

- Strengthening the capacity of school districts to effectively educate students in general education by providing significant increases in aid over a four-year period for prevention and support services. Beginning a phased-in approach to allocate special

education aid for public schools and BOCES in which districts gradually move to an allocation based on total student enrollment and poverty.

- Enacting a Quality Assurance Intervention Grant Program to assist districts with high rates of special education classification and placement of students with disabilities in separate settings to build capacity to meet the needs of these students to succeed in the general education curriculum in the least restrictive environment.
- Providing current year aid for new high cost students.

During the 1997-98 school year the Board of Regents and the State Education Department will work with key stakeholders in New York State to gain support for this proposal.

8. **What steps need to be taken to ensure that school districts' claims for special education funding are accurate?**

The Comptroller's report cites a Department study of special education costs in selected school districts. The study notes that there were discrepancies in the costs claimed for State Aid based on the level of services pursuant to the Individualized Education Programs of individual students. The Department believes that the current system using a series of weightings to approximate cost is insufficient and provides an incentive to locally manipulate the funding formula in order to generate sufficient State Aid to offset special education expenditures. The Regents proposal continues to advocate breaking the connection between State Aid and location and levels of services. We believe that the proposed formula, which will no longer include a specific weighting for level of service or be based on the number of students identified as having a disability and in need of special education services, will address the issues raised in the audit. Aid will flow to the local school district based on a formula that does not allow for local manipulation of funding.

9. **To what extent are students placed in special education programs because other options have not been developed to meet their needs?**

The Department believes a significant number of students with disabilities could be served in the general education system if various types of supports were available to students as well as their teachers. In districts of low wealth and high poverty, due to a variety of factors, we have seen over the past several years an erosion of general education support services. As noted in the Comptroller's report, this issue has resulted in the special education system serving children that it was not originally designed to serve. The Regents State Aid Proposal will make available additional resources to local school districts based upon a poverty factor to strengthen the support for general education prevention services. This factor recognizes the relationship between poverty and student needs. In addition, the current funding system supports a more traditional delivery system of pull-out services that are separate from the general education system. It is our belief that the funding formula proposed by the Board of Regents will enhance local flexibility in making resources available to serve children, using a variety of delivery models, based on their educational needs.

If you have any questions regarding this response, please contact Deputy Commissioner Lawrence Gloeckler at (518) 474-2714.

Sincerely,

Richard H. Cate

Enclosures

cc: Lawrence Gloeckler

11/13/97

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
SPECIAL EDUCATION QUALITY ASSURANCE PROCESS

REVIEW CATEGORY	REASON WHY DISTRICT SELECTED FOR CATEGORY	WHAT REVIEW WILL INCLUDE	WHAT SED ROLE WILL BE
Verification District	Meets or exceeds most or all of VESID's strategic plan goals that support IDEA as evidenced by data related to 11 key performance indicators (KPIs) listed below	• Verification of KPI data • Desk audit of LEA application submission • Discussion of practices which helped achieve results • Review of history of parent complaint issues	• Conduct data verification, probably on-site • Conduct desk audit • VESID creates list of successful practices

Quality Assurance District	Exhibits average performance in meeting goals, as evidenced by KPI data	• Comprehensive Quality Assurance review conducted by following team:
		  • special education director
		  • building principal
		  • parent
		  • general education teacher
		  • special education teacher
		  • related services provider or compensatory education teacher
		  • VESID Regional Associate
		  • Others, as appropriate
			• Regional Associate (RA) serves as active member of review team
			• RA approves Final Report, including Quality Improvement Plan
			• RA monitors implementation of plan
			• VESID creates list of successful practices

Extended Review District	Significant discrepancy between KPI data and VESID goals in most or all areas	Phase One: • Verification of KPI data • District team, under general direction of District Superintendent, conducts intensive self-review and develops plan to improve student results in specific areas Phase Two: • Comprehensive Quality Assurance Team Review	• Conduct data verification, as needed • Provide structured process for development and approval of improvement plan • Coordinate activities and communication between district team and District Superintendent • Coordinate commitment of SED resources to support improvement plan

KEY PERFORMANCE INDICATORS

- Grade 3 Reading PEP test scores*
- Grade 3 Math PEP test scores*
- Grade 6 Reading PEP test scores*
- Grade 6 Math PEP test scores*
- Reading RCT test scores*
- Math RCT test scores*
- Numbers and types of diplomas awarded*
- Dropout incidence
- Classification rate
- Integration in general education classrooms
- Placement in separate settings

*These indicators receive heavier weighting

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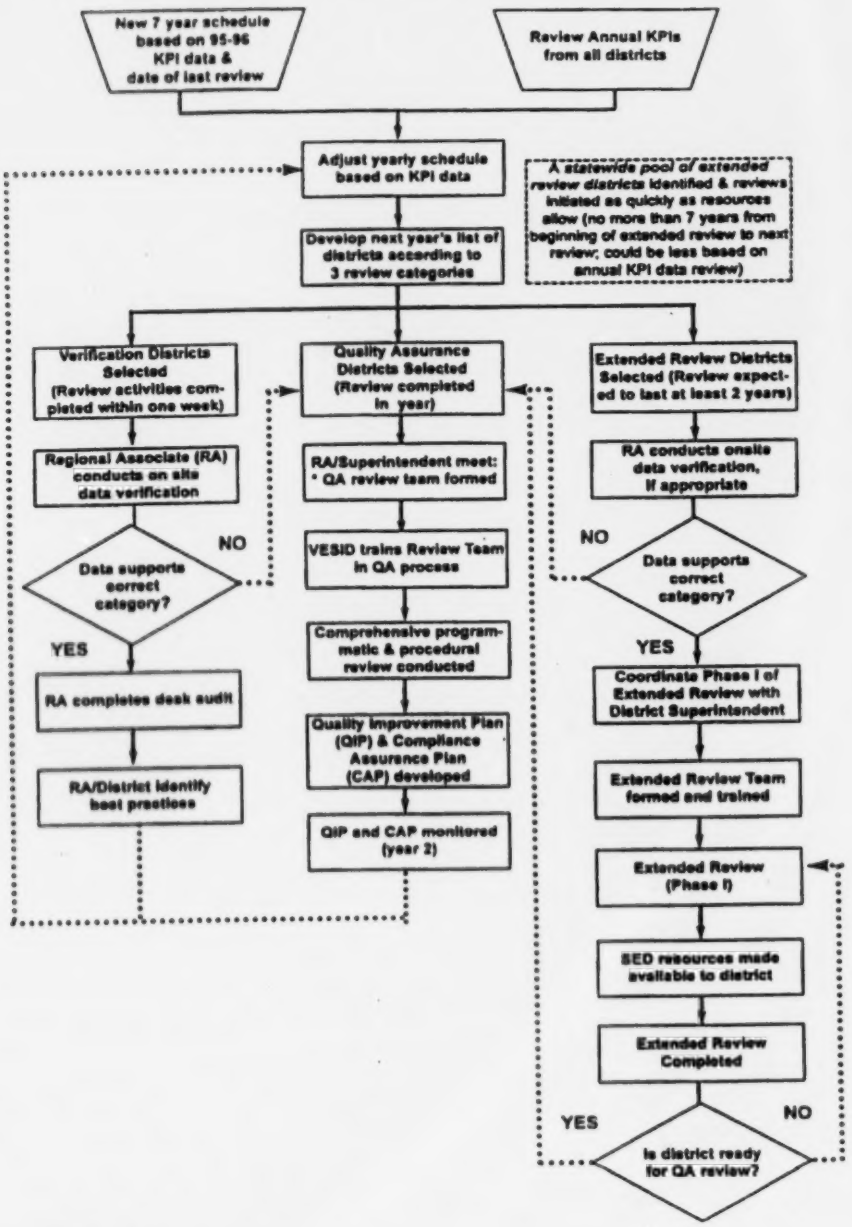
Special Education Quality Assurance Review Procedures


New 7 year schedule based on 95-96 KPI data & date of last review
Review Annual KPIs from all districts
Adjust yearly schedule based on KPI data
A statewide pool of extended review districts identified & reviews initiated as quickly as resources allow (no more than 7 years from beginning of extended review to next review; could be less based on annual KPI data review)
Develop next year's list of districts according to 3 review categories
Verification Districts Selected (Review activities completed within one week)
Quality Assurance Districts Selected (Review completed in year)
Extended Review Districts Selected (Review expected to last at least 2 years)
Regional Associate (RA) conducts on site data verification
RA/Superintendent meet: * QA review team formed
RA conducts onsite data verification, if appropriate
NO
Data supports correct category?
VESID trains Review Team in QA process
NO
Data supports correct category?
YES
Comprehensive programmatic & procedural review conducted
YES
RA completes desk audit
Quality Improvement Plan (QIP) & Compliance Assurance Plan (CAP) developed
Coordinate Phase I of Extended Review with District Superintendent
RA/District identify best practices
QIP and CAP monitored (year 2)
Extended Review Team formed and trained
Extended Review (Phase I)
SED resources made available to district
Extended Review Completed
YES
NO
Is district ready for QA review?

September 12, 1997

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significant level of funding for staff development grants now. Thus, the Regents propose increasing the allocation of funding in 1998-99 and continuing it throughout the duration of the phase-in of new assessments and curricular requirements.

The recommended appropriation for professional development would provide for additional State Aid for 10 hours of training for every public and nonpublic teacher. This aid would be based on an aidable expense of $30 per hour for10 hours, or a total of $300 for each of the State's 242,374 teachers. The proposal recommends applying the Operating Aid Ratio, adjusted for concentrations of students with extraordinary needs, to this aidable expense. For those districts with the highest concentrations of students with extraordinary needs, the adjusted aid ratio would approach 100 percent so that the district would receive the full $300 per teacher. A flat grant guarantee would ensure that no district could receive less than a specified fixed amount per teacher.

These professional development funds could be used in conjunction with local resources. Any expenditures by the school district for approved professional development activities in excess of the aid received under the new formula could be claimed as aidable expenses under any other appropriate State Aid formulas. Alternatively, the new aid could be used to leverage other existing resources for professional development, such as, funds for Teacher Centers and collaborations with institutions of higher education. That is, the new funds for professional development could be used as an incentive to target existing resources to the purposes noted above.

Reform the Financing of Special Education and Strengthen Aid for Support Services for General Education Students

For school year 1998-99, the Regents recommend that the Legislature and Governor:

- ✓ Strengthen the capacity of school districts to effectively maintain students in general education by providing significant increases over a four-year period in aid for prevention and support services.
- ✓ Begin a phased-in approach to determining special education aid for public schools and BOCES in which districts gradually move from a weighted to an unweighted special education pupil count to an allocation which begins to factor in total student enrollment and poverty.
- ✓ Continue current laws for students with disabilities with excessively high costs in public schools, students with disabilities requiring summer programs, and students with disabilities educated in approved private special education schools.
- ✓ Establish current year funding to provide additional State Aid to school districts experiencing extraordinary increases in expenditures due to newly enrolled high cost students with disabilities.

- ✓ Enact a *Quality Assurance Intervention Grant Program* to assist districts with high rates of special education classification and placement of students with disabilities in separate settings to build capacity to meet the needs of these students to succeed in the general education curriculum in the least restrictive environment.

In order to complement these legislative changes, the State Education Department should:

- ◻ Evaluate throughout the four-year period of this proposal the effects of the formula changes on student placements and improved student results and use these results to further refine Regents school aid recommendations.
- ◻ Implement a statewide training effort to provide special and general educators with the skills to educate students with disabilities in the least restrictive environment.

New York State is engaged in a major reform effort to improve the education system to create better results for students with disabilities. This effort is consistent with goals established in the Regents *Least Restrictive Environment Implementation Policy Paper*. Unfortunately, the current funding system does not provide the flexibility and support needed for integrated school programs and for improving academic performance of students with disabilities.

The recently reauthorized Federal Individuals with Disabilities Education Act (IDEA) focuses on improving educational achievement and ensuring the success of students with disabilities in the general education curriculum. This focus is remarkably similar to the special education reform proposal set forth by the New York State Board of Regents.

To strengthen the least restrictive environment (LRE) requirements of the Act, Congress included a provision that state special education funding formulas must not result in placements that violate these requirements. If state policies and procedures do not comply with the Federal LRE requirements, states must assure the Federal government that they will revise their funding mechanisms as soon as feasible to prevent restrictive placements.

In addition, Congress has authorized a change in the funding formula when the appropriation for Part B reaches $4.9 billion. When this level is reached, funding based on the number of children identified will be eliminated and funding will be based instead on the total student enrollment and levels of poverty. Congress developed the change in formula to address the problem of over-identification of children with disabilities. Congress states:

> *... today the growing problem is overidentifying children as disabled when they might not be truly disabled. The challenge today is not so much how to provide access to special education services but how to appropriately provide educational services to children with disabilities in order to improve educational results for such children. As states consider this issue, more and more states are exploring alternatives for serving more children with learning problems in the regular*

educational classroom. But in doing so, they face the prospect of reductions in Federal funds, as long as funding is tied to disabled child counts.

In the Senate Committee Report on the amended IDEA, the Committee stated that "the change from a formula based on the number of children with disabilities to a formula based on census and poverty should in no way be construed to modify the obligation of educational agencies to identify and serve children with disabilities."

This Federal approach is very similar to the Regents 1997-98 proposal to reform special education finance. The Regents proposed that over time a system be phased in, in which State Aid for services to students with disabilities would be calculated on enrollment and poverty rather than on an individual district's count of students with disabilities. Districts with high concentrations of students in poverty could receive additional aid, since such districts have greater needs, as evidenced by students' achievement and levels of student poverty. The proposed finance system would better support educational programs for students with disabilities in the least restrictive environment. Use of poverty allows the State to be responsive to district needs without encouraging specific types of placements for students. This approach would provide districts the funding flexibility to better serve students with special needs and support the move to higher learning standards. The Regents recommend refining their proposal for 1998-99 to phase in a State Aid approach conceptually similar to the Federal aid approach.

Special Education Reform Goals

The Regents have identified the following goals to guide special education reform:

- Eliminate unnecessary referrals to special education.
- Assure that students unnecessarily placed or who no longer need special education services are returned to a supportive general education environment.
- Hold special education to high standards of accountability for results for all students with disabilities.
- Assure that students with disabilities are educated in settings with their nondisabled peers to the greatest extent possible.
- Provide mechanisms for school districts to develop support and prevention services.
- Assure that school personnel have the knowledge and skills that will enable them to effectively assist students with disabilities in attaining high standards.

The 1998-99 State Aid proposal necessarily focuses on school funding. But funding is only one of a set of strategies necessary to reform special education. Although this proposal only addresses the funding of some of these strategies, funding reform will complement endeavors in other key areas.

Key Elements of the 1998-99 State Aid Proposal

The Board of Regents is committed to addressing changes in New York State's special education finance system necessary to support student attainment of high learning standards. Consistent with the Regents goals concerning education finance, the 1998-99 proposal includes a multi-year approach to attain the desired expectation of New York State's special education reform efforts. The key components of this proposal are described below.

✓ **Strengthen Prevention and Support Services**

Prevention and support services for students experiencing difficulties in general education are a focal point of the Regents proposal. Support services provided earlier and on a more timely basis effectively improve student results and reduce costs in both general and special education. This component of the proposal is supported by the findings of Congress in Section 601(c) of the IDEA. Congress states that research and experience over the past 20 years demonstrate that incentives for whole school approaches and pre-referral intervention reduce the need to label children as disabled in order to address their learning needs.

Congress also finds that greater efforts are needed to prevent mislabeling and high dropout rates among minority students with disabilities. Congress notes that more minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population. Various studies have shown evidence that prevention and prereferral problem-solving in general education reduces the disproportionate representation of students from minority groups identified for special education programs and services. To avoid inappropriate referrals and misclassification, it is important to ensure that educators are able to accurately distinguish students who need alternative general education strategies or additional support services from students who have educationally relevant disabilities and are in need of special education.

In addition to national studies on the effectiveness of general education prevention and support services, New York State school districts which have implemented prevention and pre-referral support services have shown a dramatic decline in referrals to special education. It is essential that State support for this program be significantly increased to augment the capacity of school districts to provide effective programs and services.

The creation of a new Prevention and Support Services Aid would greatly expand the existing *Educationally Related Support Services Aid* program, by demanding stronger ties between support services and student progress toward achieving high learning standards. This more substantial aid program could be used for increased related services such as speech therapy, psychological, social work and counseling services. It could be used to develop the capacity of school-level instructional support teams of teachers and other school personnel who collaboratively provide programs and services to students.

A multi-year commitment to strengthening and enhancing prevention and support services will:

- Provide school districts continued funding to design a general education system that is more supportive to students, including those representing minority groups, experiencing learning difficulties and/or who have mild disabilities;

- Provide increasing support to school districts as they expand their prevention and support services and simultaneously strengthen the capacity of teachers and students to make progress toward high learning standards; and

- Enable school districts to reinvest savings in total special education spending in prevention.

Currently, there is little incentive for districts to implement cost-effective programs. Funding is reduced in districts that place a greater priority on preventive activities in general education and as a result have fewer students classified in special education.

The primary goal of the reinvestment strategy proposed by the Regents is significantly improved outcomes for students. It showcases a model developed by the Center for the Study of Social Policy.[3] The model provides an incentive for cost-effectiveness by allowing service providers to reinvest savings in activities targeted to improved results for children and families that reduce the need for more costly intervention services in the future. The focus is on prevention targeted to specific results with greater local control of resources to create savings and achieve results. The model has been lauded for its effectiveness at fostering collaboration among education and human service providers for the attainment of improved results for children and families. The Regents believe the model to be especially appropriate for creating better results in general and special education.

✓ **Revise Special Education Funding Aid for Students with Disabilities Placed in Public Schools and BOCES**

Consistent with the 1997-98 proposal, the Regents continue to advocate making positive progress toward a special education funding system that breaks the connection between (1) special education funding and (2) location and level of service provided.

Currently, the State pays aid on the basis of the number of students in special education in each district and the amount and type of special education service provided to each pupil. The Regents recommend moving in the direction of a distribution formula similar to that enacted by the Federal government. State Aid for students with disabilities educated in public schools and

[3] The Center for the Study of Social Policy is a Washington, D.C.-based research organization concerned with financing services for children and families. The Center receives grants from a variety of foundations including the Danforth Foundation, Annie E. Casey Foundation, Carnegie Corporation and the New American Schools Development Corporation.

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BOCES (*Public Excess Cost Aid*) would eventually be distributed on the basis of total school enrollment and student poverty.

Specifically, this special education funding system would:

- Provide a flexible funding stream to support the provision of services to students in the least restrictive environment by allowing funds to follow the child and to support a level of service based on need rather than arbitrary minimum levels of service that are in Present Law;

- Adequately support school district delivery models which concentrate the provision of special education programs and services in the general education classroom versus more traditional, separate special education delivery systems;

- Maintain a stable special education funding appropriation as school districts explore alternatives for serving more and more students with learning problems in the general education classroom (under Present Law school districts face the prospect of reduction in State funds, as funding is tied to the number of classified students with disabilities);

- Enable school districts to undertake good practices for addressing the learning needs of more children in the general classroom without unnecessary categorization or labeling and likely loss of funds. The problem of overidentification occurs more with minority children. This problem also contributes to the referral of minority special education students to more restrictive environments; and

- Establish a funding formula which uses objective data (enrollment and poverty) not tied to student placements. This eliminates the financial incentives for manipulating student counts (that exist in the current system) including retaining students in special education just to continue receiving State funds. A poverty factor in the formula would recognize the additional cost of educating students living in poverty and the link between the needs of students and certain forms of disability.

✓ **Transition to the new funding formula using a gradual phase-in. Invest in general education support and prevention services over the next three years and phase-in the new funding system over the next several years.**

Public comment concerning the Regents proposal on special education funding emphasized the need for districts to have time to adjust to a new funding formula and to maintain existing funding formulas for students with severe disabilities. Districts need resources, assistance and time to develop effective preventive programs in general education. They also need time to implement cost-effective strategies for educating students with disabilities.

For the 1998-99 school year, the Regents propose to continue Present Law for *Public Excess Cost Aid*, which uses a count of students with disabilities, weighted by level of special

education service. Present Law save-harmless provisions guaranteeing no loss over the previous year would also be maintained.

The following transition schedule is proposed:

- ***Shift from weighted pupils to unweighted pupils.*** In the 1999-00 and 2000-01 school years, increase the appropriation for *Public Excess Cost Aid* (excluding *High Cost Aid)* to account for inflation. Distribute this amount on the basis of a count of students with disabilities that is *not* weighted for different levels of special education service.

- ***Begin gradual transition to new funding.*** In 2001-02 continue to allocate *Public Excess Cost Aid* on the basis of (unweighted) students with disabilities for 80 percent of funds. Begin to transition to a new formula by allocating 17 percent of funds on the basis of school district enrollment and three percent of funds on the basis of school district poverty. Continue save-harmless provisions to guard districts against excessive year-to-year loss by providing that no district will receive less than 100 percent of the aids payable in 1998-99 (excluding *High Cost Aid* which will be paid separately). [4]

✓ **Continue current laws for students with disabilities with excessively high costs in public schools, students with disabilities requiring summer programs, and students with disabilities educated in approved private special education schools.**

The Regents recommend that current funding formulas be continued for the following groups of students:

- students with disabilities with excessively high costs who are educated in public schools;
- students with disabilities requiring special education programs and services during the summer; and
- students with disabilities in approved private schools, Special Act School Districts, the State-operated schools for the deaf and blind at Rome and Batavia, and State-supported schools.

To assure that the private excess cost formula is consistent with the Federal LRE requirements, the Regents recommend that the Department convene a special education advisory group to make recommendations concerning the effect the excess cost funding formula may have on placements of students with disabilities in more restrictive settings. The special education advisory group shall be composed of representatives of statewide organizations, public and private school administrators, parents of students with disabilities, representatives of private

[4] It should be noted, however, that the more paid for save-harmless, the less *Public Excess Cost Aid* will be available to districts for whom the formula would result in an increase over the prior year. In order to stay within a total appropriation for *Public Excess Cost Aid*, the more that the State pays for save-harmless, the more the State must limit the amount of increased funds to be received by districts which are not on save-harmless.

schools, State teachers' associations, members of the Commissioner's Advisory Panel for Special Education Services and others as determined by the Commissioner.

✓ **Establish current year funding to provide additional State Aid to school districts experiencing extraordinary increases in expenditures due to newly enrolled high cost students with disabilities.**

A current year funding appropriation should be made to provide additional State Aid to school districts experiencing extraordinary increases in spending on programs and services for new high cost students with disabilities. An appropriation would be set aside to assist school districts when expenditures for new high cost students with disabilities would otherwise impose a financial hardship on a district. This is expected to be especially beneficial to small or particularly low-wealth districts, for which this required increased spending would impose a hardship. This appropriation would provide fiscal support for new high cost students until High Cost Aid was received.

✓ **Enact a *Quality Assurance Intervention Grant Program* to assist districts with high rates of special education classification and placement of students with disabilities in separate settings. The goal of the program should be to build capacity to meet the needs of these students to succeed in the general education curriculum in the least restrictive environment by reducing these rates.**

The Regents recommend the establishment of a temporary grant program to assist school districts with high rates of classification or separate placements of students with disabilities to develop prevention activities and innovative practices. The funds would be provided to approximately 100 school districts (or Community School Districts in New York City) to assist them in reducing rates of classification and separate placements and improve student achievement. The funds could be used for:

- Planning related to building capacity to meet high learning standards;
- Implementation of different delivery systems;
- Providing curriculum development pertinent to the new standards;
- Developing greater student success in accomplishing coursework leading to the new standards;
- Greater integrated opportunities for students with disabilities;
- Applying research-based approaches on effective instruction to improve results;
- Collecting and analyzing data on student achievement in relation to the learning standards; and
- Supporting staff development including collaboration between special and general education teachers.

To complement these legislative changes, the State Education Department should evaluate the effects of the formula changes on student placements and improved student results and implement a technical assistance effort designed to improve results of targeted school districts.

The Regents recommend that the State Education Department evaluate the effect of the proposed formula changes on student placements and achievement and adjust these school aid recommendations accordingly.

The Department will provide technical assistance activities that link districts with those identified as having effective practices and furnish information on alternative service delivery models and improved and coordinated use of financial resources, including State funds for prevention and support services.

Gaining Support for the Regents Proposal

The Department will continue to engage in many efforts to gain support for the Regents proposal through communication and collaboration with constituents. Specific activities include:

- Statewide meetings with key educational and parent groups and organizations;
- Wide dissemination of information on the Regents special education funding proposal to educators, parents and advocacy groups; and
- Collaborative efforts with the Executive and Legislative branches of government to develop recommendations in areas of similar interest.

In order to foster the Regents proposals for special education reform, in particular the reform of special education finance, these efforts will be maintained throughout the fall. Special emphasis will be placed on involving key constituency groups as early as possible in discussions of the 1998-99 State Aid proposal.

Provide Calendar Flexibility

✓	Give school districts the flexibility to adopt a school calendar with a portion of the required 180 days of session in July and/or August, without suffering a loss of State Aid.

Increasing enrollments have placed greater demands on school facilities. Some students would benefit from being able to have flexible options for scheduling the school calendar. Others would benefit from increased instructional time, in addition to the 180-day school year, in the form of regular class instruction or study clubs that may be offered by parent groups or others outside of the regular school day. A flexible school calendar can be useful in maximizing the use of school buildings, while at the same time providing countless additional opportunities for all students, teachers and parents to meet the challenges of high learning standards.

The Board of Regents recommends legislation that would give school districts the flexibility to adopt a school calendar with a portion of the required 180 days of session in July and/or August, without suffering a loss of State Aid. This would:

- Eliminate provisions of Education Law that specify attendance of students in July and August as *summer session* attendance for the calculation of reduced State Aid. Redefine such attendance as attendance of students in *extra sessions*, to occur at any time during the year in addition to the regular 180-day calendar;
- Continue to pay State Aid on the basis of 180 days of attendance, but allow districts the latitude to have some or all students meet the 180-day requirement with days of session in July and/or August without loss of State Aid;
- Require school districts to designate the regular 180-day calendars they will use in the following school year in each school after consultation with their education community;
- Replace State Aid for summer session attendance with aid for extra school attendance, so that instruction provided in school breaks at any time of year will be aidable to the extent summer attendance has been aidable in the past; and
- Amend the provisions of the Education Law on 12-month programming for students with disabilities to account for the possibility that days of regular session may be conducted in July or August, and that special education programs and services may be needed during protracted school breaks occurring at any time of year.
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Enact a New School Improvement Aid *for School Districts with the Highest Concentration of Students Living in Poverty*

✓ Enact a new *School Improvement Aid* for school districts with the highest concentration of students living in poverty to support planned school improvement activities.

In recent years, the Board of Regents has grown increasingly concerned over accountability for educational improvement among the State's lowest performing students. Resource allocation decisions also affect these students. Review of student demographic data and expenditure patterns of districts presented in Section II of this proposal showed that:

- Thirty percent of New York State's school districts have been identified as *high need*, as measured by student poverty and educational achievement, in relation to their ability to raise revenues locally. These high need districts educate 55 percent of New

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